STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
GENERAL COUNSEL

County of Mercer, Employer and International Union of Operating Engineers, Local 150, Labor Organization	)	Case No. S-DR-15-004

DECLARATORY RULING

On January 20, 2015, the Employer, County of Mercer, filed a Petition for Declaratory Ruling in Case No. S-DR-15-004, in which it asks

> whether the inclusion of a voluntary interest arbitration provision as part of a successor labor agreement is a permissive subject of bargaining.

Although the petition was filed unilaterally and the labor agreement is not for a protective service bargaining unit, both parties have filed briefs and in its brief the Labor Organization, International Union of Operating Engineers, Local 150, has expressed a desire to belatedly join in the petition. Consequently, I will treat the petition as a joint petition and address the issue presented pursuant to Section 1200.143(a) of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code § 1200.143(a).

I. Background

The Labor Organization is the exclusive representative of a bargaining unit of employees of the County of Mercer as certified by the Illinois State Labor Relations Board in Case No. S-RC-92-26. It entered into a collective bargaining agreement with the Employer effective from December 1, 2009 through November 30, 2013. Attached as the final page of that agreement is a

side letter of understanding providing for the use of interest arbitration to resolve potential impasse in reaching successor agreements:

> The parties to this Agreement shall employ the interest arbitration process set out in Section 1614 of the Illinois Public Labor Relations Act in all future successor negotiations should impasse arise in those negotiations.[1]

During bargaining over a successor to the 2009-2013 agreement, the Labor Organization proposed to retain this same side letter of understanding. On July 30, 2014, after the Labor Organization rejected the Employer's earlier request for mediation concerning this and other topics, the Employer demanded compulsory interest arbitration pursuant to this side letter of understanding.

II. Relevant Statutory and Regulatory Provisions

The duty to bargain is defined in Section 7 of the Illinois Public Labor Relations Act which provides in relevant part:

> A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.
>
> For the purpose of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other conditions of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
>
> The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the

[1] Prior to 1992, Section 14 of the Illinois Public Labor Relations Act was published as Paragraph 1614 in the compilation of Illinois statutes entitled "Illinois Revised Statutes." The current compilation in the "Illinois Compiled Statutes" refers to this section as Section 14. Compare Ill. Rev. Stat. ch. 48, ¶ 1614 (1991) with 5 ILCS 315/14 (1992) and 5 ILCS 315/14 (2012).

> wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

5 ILCS 315/7 (2012).

Section 4 of the Act provides:

> Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

5 ILCS 315/4 (2012).

Section 1230.170 of the Rules and Regulations of the Illinois Labor Relations Board provides:

a) The parties may voluntarily agree in writing to use interest arbitration.

b) The parties may request a list of interest arbitrators from the Board by completing a Board-designated form and a copy of their agreement to use interest arbitration. Upon receipt of the request, the Board shall provide the parties a list of up to 7 interest arbitrators from the Public Employees Mediation/Arbitration Roster. If the parties are unable to select an arbitrator from the list provided by the Board, upon request, the Board shall provide a second list of interest arbitrators to the parties. Except under extraordinary circumstances, the Board shall provide no more than 2 lists.

c) The neutral interest arbitrator selected by the parties shall conduct the voluntary interest arbitration in accordance with the agreement of the parties. The interest arbitrator or interest arbitration panel shall use the factors set forth in Section 1230.100(b) of this Part as guidelines in rendering the award.

80 Ill. Admin. Code § 1230.170

III. The Parties' Proposals

The Employer proposes that the successor agreement no longer contain the interest arbitration provision set out in the side letter of understanding, while the Labor Organization states it has made no proposals to change this aspect of the parties' contract. In other words, it wants to retain the following language:

> The parties to this Agreement shall employ the interest arbitration process set out in Section 1614 of the Illinois Public Labor Relations Act in all future successor negotiations should impasse arise in those negotiations.

IV. Issue

The issue is whether continued inclusion in collective bargaining agreements of a provision requiring the use of interest arbitration as a means to resolve potential impasse in the bargaining of future contracts concerns a permissive subject of bargaining rather than a mandatory subject of bargaining.[2]

V. Discussion and Analysis

A proposal to retain within the collective bargaining agreement presently being negotiated a provision requiring the use of interest arbitration as a means of resolving potential impasses in the bargaining of future contracts is a permissive subject of bargaining. This is evident not only from the permissive language used in Board Rule 1230.70(a)—"the parties may voluntarily agree in writing to use interest arbitration"—but also by means of application of the test to be used to determine the nature of bargaining topics required by the Illinois Supreme Court and reference to holdings under the National Labor Relations Act.

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[2] While the Employer phrases the issue in terms of inclusion of a "voluntary" interest arbitration provision, the Labor Organization correctly notes that, having agreed to use interest arbitration to resolve potential impasse for successor agreements, use of that procedure is no longer voluntary, but required.

Pursuant to Section 7 of the Illinois Public Labor Relations Act, parties are required to bargain collectively regarding employees' wages, hours, and other conditions of employment—the "mandatory" subjects of bargaining. City of Decatur v. Am. Fed'n of State, Cnty. and Mun. Empl., Local 268, 122 Ill. 2d 353 (1988); Am. Fed'n of State, Cnty. and Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259 (lst Dist. 1989); Ill. Dep't of Military Affairs, 16 PERI ¶ 2014 (IL SLRB 2000); City of Mattoon, 13 PERI ¶ 2016 (IL SLRB 1997); City of Peoria, 3 PERI ¶ 2025 (IL SLRB 1987). However, Section 4 of the Act provides that "[e]mployers shall not be required to bargain over matters of inherent managerial policy." 5 ILCS 315/4 (2012). To resolve the tension between Section 7 and Section 4, the Illinois Supreme Court has established the three-part Central City test: First, ask whether the matter is one of wages, hours, and terms and conditions of employment. If the answer is "no," there is no duty to bargain. If the answer is "yes," the second step is to ask if the matter is also one of inherent managerial authority. If that answer is "no," there is a duty to bargain. If it is "yes," one must proceed to the third step and "balance the benefits that bargaining will have on the decision-making process with the burdens that bargaining imposes on the employer's authority." City of Belvidere v. Ill. State Labor Rel. Bd., 181 Ill. 2d 191, 206 (1998) (applying Central City Educ. Ass'n v. Ill. Educ. Labor Rel. Bd., 149 Ill. 2d 496, 523 (1992)).

This case may be resolved at the first step. Inclusion of a provision requiring use of interest arbitration to resolve potential impasse in bargaining future contracts has no bearing on terms and conditions of employment during the term of the contract presently being negotiated. Federal courts have recognized this. N.L.R.B. v. Columbus Printing Pressmen & Assistants' Union No. 252, 543 F.2d 1161, 1166 (5th Cir. 1976) ("We ... hold that such a clause is not a mandatory subject of bargaining, since its effect on terms and conditions of employment during

the contract period is at best remote."); cf. Globe Newspaper Co. v. Int'l Ass'n of Machinists, 648 F. Supp. 193, 198 (D. Mass. 2009) (collecting cases and concluding: "It appears that every court to have considered this question has concluded that this type of second generation interest arbitration provision is unenforceable as contrary to public policy."). Citing Columbus Printing and its own precedent, the National Labor Relations Board has concluded: "There can no longer be any doubt that interest arbitration is a permissive subject of bargaining and, therefore, a party cannot insist upon it in negotiations to the point of impasse." Connecticut State Conference Bd., 339 NLRB 760 (2003). Moreover, it has noted that "Board law precludes a party from using an existing interest arbitration clause to perpetuate that clause."[3]

Because it is not a matter of wages hours, and terms and conditions of employment during the contractual term, and consistent with the holdings of the federal courts and the National Labor Relations Board, I find the proposal to retain a provision requiring the use of interest arbitration to resolve potential impasse in future negotiations to be a permissive subject of bargaining. Because the existing interest arbitration clause should not be self-perpetuating, my conclusion is not altered by the fact that the Labor Organization is not proposing a change from the language of the present agreement.

Issued in Chicago, Illinois, this 10th day of March, 2015.

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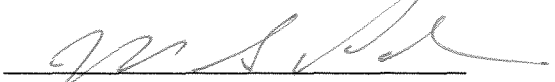

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[3] Relying on this same precedent, the Executive Director has in dicta stated that the proposal at issue is a permissive subject of bargaining. Cnty. of Mercer & Int'l Union of Operating Eng's, Local 150, Case No. S-CB-15-008 (IL LRB Exec. Dir. Feb. 27, 2015) (dismissing employer's unfair labor practice charge because mere submission of a permissive subject of bargaining to interest arbitration does not violate the Act under the holding of City of Wheaton, 31 PERI 131 (IL LRB-SP 2015)).